

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

Joseph P. Torrano, in individual
and representative capacity as
trustee Of The Joseph P. Torrano
Revocable Trust Dated November 5,
2001;
**Casa Guadalupe Supermarket
Inc**, a California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Joseph P. Torrano, in individual and representative capacity as trustee Of The Joseph P. Torrano Revocable Trust Dated November 5, 2001; Guadalupe Supermarket Inc, a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

1 2. Defendant Joseph P. Torrano, in individual and representative capacity
2 as trustee Of The Joseph P. Torrano Revocable Trust Dated November 5,
3 2001, owned the real property located at or about 2999 Mission St, San
4 Francisco, California, in July 2021.

5 3. Defendant Joseph P. Torrano, in individual and representative capacity
6 as trustee Of The Joseph P. Torrano Revocable Trust Dated November 5,
7 2001, owns the real property located at or about 2999 Mission St, San
8 Francisco, California, currently.

9 4. Defendant Guadalupe Supermarket Inc owned Casa Guadalupe
10 Supermarket located at or about 2999 Mission St, San Francisco, California,
11 in July 2021.

12 5. Defendant Guadalupe Supermarket Inc owns Casa Guadalupe
13 Supermarket ("Store") located at or about 2999 Mission St, San Francisco,
14 California, currently.

15 6. Plaintiff does not know the true names of Defendants, their business
16 capacities, their ownership connection to the property and business, or their
17 relative responsibilities in causing the access violations herein complained of,
18 and alleges a joint venture and common enterprise by all such Defendants.
19 Plaintiff is informed and believes that each of the Defendants herein is
20 responsible in some capacity for the events herein alleged, or is a necessary
21 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
22 the true names, capacities, connections, and responsibilities of the Defendants
23 are ascertained.

24
25 **JURISDICTION & VENUE:**

26 7. The Court has subject matter jurisdiction over the action pursuant to 28
27 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
28 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1 8. Pursuant to supplemental jurisdiction, an attendant and related cause
2 of action, arising from the same nucleus of operative facts and arising out of
3 the same transactions, is also brought under California's Unruh Civil Rights
4 Act, which act expressly incorporates the Americans with Disabilities Act.

5 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
6 founded on the fact that the real property which is the subject of this action is
7 located in this district and that Plaintiff's cause of action arose in this district.

8
9 **FACTUAL ALLEGATIONS:**

10 10. Plaintiff went to the Store in July 2021 with the intention to avail
11 himself of its goods or services motivated in part to determine if the
12 defendants comply with the disability access laws. Not only did Plaintiff
13 personally encounter the unlawful barriers in July 2021, but he wanted to
14 return and patronize the business again but was specifically deterred due to his
15 actual personal knowledge of the barriers gleaned from his encounter with
16 them.

17 11. The Store is a facility open to the public, a place of public
18 accommodation, and a business establishment.

19 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
20 to provide wheelchair accessible sales counters in conformance with the ADA
21 Standards as it relates to wheelchair users like the plaintiff.

22 13. The Store provides sales counters to its customers but fails to provide
23 wheelchair accessible sales counters.

24 14. A couple of problems that plaintiff encountered was that the sales
25 counter was too high. There was no counter that was 36 inches or less in height
26 that plaintiff could use for his transactions. What is more, defendants placed
27 ice cream freezers in front of the sales counter, which served as an obstruction.

28 15. Plaintiff believes that there are other features of the sales counters that

1 likely fail to comply with the ADA Standards and seeks to have fully compliant
2 sales counters available for wheelchair users.

3 16. On information and belief, the defendants currently fail to provide
4 wheelchair accessible sales counters.

5 17. These barriers relate to and impact the plaintiff's disability. Plaintiff
6 personally encountered these barriers.

7 18. As a wheelchair user, the plaintiff benefits from and is entitled to use
8 wheelchair accessible facilities. By failing to provide accessible facilities, the
9 defendants denied the plaintiff full and equal access.

10 19. The failure to provide accessible facilities created difficulty and
11 discomfort for the Plaintiff.

12 20. The defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 21. The barriers identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove. Moreover, there are numerous
19 alternative accommodations that could be made to provide a greater level of
20 access if complete removal were not achievable.

21 22. Plaintiff will return to the Store to avail himself of its goods or services
22 and to determine compliance with the disability access laws once it is
23 represented to him that the Store and its facilities are accessible. Plaintiff is
24 currently deterred from doing so because of his knowledge of the existing
25 barriers and his uncertainty about the existence of yet other barriers on the
26 site. If the barriers are not removed, the plaintiff will face unlawful and
27 discriminatory barriers again.

28 23. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are
 2 other violations and barriers on the site that relate to his disability. Plaintiff will
 3 amend the complaint, to provide proper notice regarding the scope of this
 4 lawsuit, once he conducts a site inspection. However, please be on notice that
 5 the plaintiff seeks to have all barriers related to his disability remedied. See
 6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 7 encounters one barrier at a site, he can sue to have all barriers that relate to his
 8 disability removed regardless of whether he personally encountered them).

9
 10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 24. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint.

16 25. Under the ADA, it is an act of discrimination to fail to ensure that the
 17 privileges, advantages, accommodations, facilities, goods and services of any
 18 place of public accommodation is offered on a full and equal basis by anyone
 19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 20 § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,
 22 or procedures, when such modifications are necessary to afford
 23 goods, services, facilities, privileges, advantages, or
 24 accommodations to individuals with disabilities, unless the
 25 accommodation would work a fundamental alteration of those
 26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is
 28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

defined by reference to the ADA Standards.

c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

26. When a business provides sales counters, it must provide accessible sales counters.

27. Here, accessible sales counters have not been provided in conformance with the ADA Standards.

28. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

29. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

30. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

31. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,

1 that persons with disabilities are entitled to full and equal accommodations,
2 advantages, facilities, privileges, or services in all business establishment of
3 every kind whatsoever within the jurisdiction of the State of California. Cal.
4 Civ. Code § 51(b).

5 32. The Unruh Act provides that a violation of the ADA is a violation of the
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 33. Defendants' acts and omissions, as herein alleged, have violated the
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
9 rights to full and equal use of the accommodations, advantages, facilities,
10 privileges, or services offered.

11 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
12 discomfort or embarrassment for the plaintiff, the defendants are also each
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
14 (c).)

15
16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 plaintiff is not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. For equitable nominal damages for violation of the ADA. See
24 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
25 and any other equitable relief the Court sees fit to grant.

26 3. Damages under the Unruh Civil Rights Act, which provides for actual
27 damages and a statutory minimum of \$4,000 for each offense.
28

1 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: August 30, 2021

CENTER FOR DISABILITY ACCESS

5
6
7 By: _____



8 Amanda Seabock, Esq.
9 Attorney for plaintiff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28